

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of Application of)	
)	
AMTS CONSORTIUM, LLC)	FCC File No. 0002147762
)	
To Partially Assign License for Station WQCP810)	
to Northeast Utilities Service Company)	

ORDER

Adopted: November 8, 2005

Released: November 9, 2005

By the Chief, Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau:

INTRODUCTION

1. In this *Order*, we address the above-captioned application and waiver request filed on May 4, 2005 by AMTS Consortium, LLC (ACL) to assign Automated Maritime Telecommunications System (AMTS) frequencies to Northeast Utilities Service Company (NUSCO);¹ a petition filed on May 25, 2005 by Paging Systems, Inc. (PSI) to deny the application;² and a request filed on July 13, 2005 by ACL and NUSCO, and modified on August 3, 2005, for confidential treatment of certain materials submitted in conjunction with the application.³ As set forth below, we deny the petition to deny, and grant the request for protection and waiver request to the extent described herein, and will process the assignment application.

BACKGROUND

2. AMTS stations provide automated, interconnected ship-to-shore communications similar to a cellular phone system for tugs, barges, and other maritime vessels.⁴ In 2002, the Commission adopted a geographic area licensing approach for AMTS stations.⁵ Geographic licensees must provide a specified

¹ FCC File No. 0002147762 (filed May 4, 2005).

² Petition to Deny (filed May 25, 2005) (Petition). ACL and NUSCO filed oppositions. ACL Opposition to Petition to Deny (filed June 8, 2005) (ACL Opposition); NUSCO Opposition to Petition to Deny (filed June 7, 2005) (NUSCO Opposition). PSI filed a reply. Reply to Opposition to Petition to Deny (filed June 15, 2005) (Reply).

³ Request for Protection Under § 0.459 and § 0.457 Attaching Document Subject to this Request: Filing Under Section 1.2111(a), (filed July 13, 2005) (Protection Request). PSI filed an opposition. Opposition to Request for Protection Under §§ 0.459 and 0.457 (filed July 22, 2005). ACL and NUSCO filed a reply, and modified their request. Reply to Opposition to Request for Protection Under §§ 0.459 and 0.457 (filed Aug. 3, 2005). PSI filed an opposition to the modified request. Opposition to Modified Request for Protection Under §§ 0.459 and 0.457 (filed Aug. 12, 2005) (Opposition to Modified Protection Request). ACL and NUSCO filed a reply. Reply to Opposition to Modified Request for Protection Under §§ 0.459 and 0.457 (filed Aug. 24, 2005).

⁴ See Amendment of Parts 2 and 80 of the Commission's Rules Applicable to Automated Maritime Telecommunications Systems (AMTS), *First Report and Order*, GEN Docket No. 88-372, 6 FCC Rcd 437, 437 ¶ 3 (1991).

⁵ See Amendment of the Commission's Rules Concerning Maritime Communications, *Second Memorandum Opinion and Order and Fifth Report and Order*, PR Docket No. 92-257, 17 FCC Rcd 6685, 6696 ¶ 24 (2002).

level of co-channel interference protection to co-channel incumbents,⁶ and may not exceed a specified field strength at the geographic area border.⁷ The first AMTS auction was held on September 15, 2004.⁸ ACL was the high bidder for the Channel Block B license for the Northern Atlantic region,⁹ and was granted a license under Call Sign WQCP810 on April 26, 2005.

3. On May 4, 2005, ACL submitted an application to assign part of the license to NUSCO. ACL proposes to partition the entire channel block in New Hampshire, western Massachusetts (Berkshire and Franklin Counties, and parts of Worcester, Hampshire, and Hamden Counties), and eastern Connecticut (Windham, Tolland, Hartford, New London, and Middlesex Counties, and parts of New Haven, Litchfield, and Fairfield Counties); and to partition and disaggregate part of the channel block in the remaining parts of New Haven, Litchfield, and Fairfield Counties.¹⁰ In connection with the application, NUSCO, an electric power provider, requests a waiver to permit it to use the AMTS spectrum for private land mobile radio (PLMR) operations.¹¹ On May 25, 2005, PSI filed a petition to deny the application. On July 23, 2005, ACL and NUSCO filed a request for confidential treatment of their purchase agreement.

DISCUSSION

4. *Petition to Deny.* PSI asserts that it has standing to file the petition to deny because it is licensed for co-channel incumbent stations within the AMTS Northern Atlantic region.¹² We agree with ACL, however, that this is not sufficient to confer standing.¹³ Rather, PSI must at least show “significant service area overlap” such that “it is conceivable” that PSI and NUSCO would be operating in the same territory.¹⁴ PSI has no licensed facilities within the areas to be partitioned, and has not demonstrated that any of its service contours overlap any of the partitioned areas. PSI also argues that it has standing because it is entitled to interference protection from geographic licensees, and it believes that NUSCO’s proposed operations could pose a threat of harmful interference.¹⁵ Given that, as PSI acknowledges,¹⁶ it is entitled to interference protection from geographic licensees and PSI makes no showing of harmful interference or economic harm, we conclude that this speculative concern regarding interference is insufficient to establish standing.¹⁷ Nonetheless, we will, as requested by PSI,¹⁸ treat its petition as an

⁶ See 47 C.F.R. § 80.385(b)(1).

⁷ See 47 C.F.R. § 80.479(b).

⁸ Automated Maritime Telecommunications System Spectrum Auction Closes, *Public Notice*, 19 FCC Rcd 18252, 18252 (WTB 2004).

⁹ See *id.* at 18258.

¹⁰ See FCC File No. 0002147762, Description of Partitioning and Disaggregation.

¹¹ See FCC File No. 0002147762, Waiver Request.

¹² See Petition at 2.

¹³ See ACL Opposition at 3.

¹⁴ Mobex Network Services, LLC, *Order*, 18 FCC Rcd 12309, 12311 ¶ 6 (WTB PSPWD 2003); see also Mobex Network Services, LLC, *Order*, 18 FCC Rcd 12305, 12307 ¶ 5 (WTB PSPWD 2003).

¹⁵ See Reply at 3.

¹⁶ See Petition at 2.

¹⁷ See, e.g., ABC Wireless L.L.C., *Order*, 15 FCC Rcd 6787, 6789 ¶ 4 (WTB CWD PRB 1999). In the event PSI experiences actual interference from NUSCO’s operations, it may bring the situation to the Commission’s attention for appropriate action.

¹⁸ See Reply at 3 n.5.

informal request for relief pursuant to Section 1.41 of the Commission's Rules,¹⁹ and proceed to address the merits.

5. PSI observes that the assignment application was filed five business days after ACL was granted the license for Call Sign WQPC810, and infers that the parties agreed to the sale while ACL's license application was pending.²⁰ PSI then suggests²¹ that ACL's license should be rescinded for failure to update its license application as required by Section 1.65 of the Commission's Rules.²² The record indicates, however, that no agreement had been finalized at the time the license application was granted.²³ We agree with ACL that while Section 1.65 requires applicants to give notice to the Commission of material changes affecting their pending applications, it does not require that the Commission be notified of proposed transactions that are being negotiated.²⁴

6. PSI also contends that ACL and NUSCO did not meet the requirements of Section 1.2111(a) of the Commission's Rules,²⁵ because they did not provide copies of any transaction agreements, thus rendering the assignment application incomplete.²⁶ ACL and NUSCO argue that nothing in the rules requires filing relevant contracts and agreements at the same time as the application is filed, as long as they eventually are filed.²⁷ While PSI is correct that an assignment application subject to the requirements of Section 1.2111(a)²⁸ cannot be processed until the relevant agreements have been filed,²⁹ we need not dismiss the assignment application because, as discussed below, ACL and NUSCO later cured this defect by submitting the required documentation.

7. *Request for Confidential Treatment.* On July 13, 2005, ACL and NUSCO submitted a copy of their purchase agreement, and requested that it be treated as confidential pursuant to Section 0.457(d) of the Commission's Rules. On August 3, 2005, ACL and NUSCO filed a redacted copy of the purchase agreement, which deleted financial data and certain information regarding the parties' future plans.

8. PSI argues that the redacted copy is insufficient, and the entire agreement must be disclosed "so that the transaction can be fully scrutinized."³⁰ We disagree. The primary purpose of the requirement in Section 1.2111(a) that the relevant contracts and agreements be filed with the assignment application is

¹⁹ 47 C.F.R. § 1.41.

²⁰ See Petition at 5.

²¹ See *id.* at 6.

²² 47 C.F.R. § 1.65.

²³ See ACL Opposition at 7.

²⁴ *Id.*; see, e.g., Nextel Communications, Inc., *Order*, 10 FCC Rcd 3361, 3368 ¶ 43 (WTB 1995).

²⁵ 47 C.F.R. § 1.2111(a).

²⁶ See Petition at 3.

²⁷ See NUSCO Opposition at 2; ACL Opposition at 7.

²⁸ *I.e.*, an application seeking approval for a transfer or assignment of a license within three years of receiving a new license through competitive bidding.

²⁹ See Petition at 3; Reply at 4-5. See also Implementation of Section 309(j) of the Communications Act – Competitive Bidding, *Second Report and Order*, PP Docket No. 93-253, 9 FCC Rcd 2348, 2385 ¶ 215 (1994) (*Competitive Bidding Second Report and Order*) ("the applicant will be required to file, *together with its application*, the associated contracts for sale, option agreements, management agreements, or other documents") (emphasis added).

³⁰ Opposition to Modified Protection Request at 2.

“to monitor transfers of licenses awarded by competitive bidding in order to accumulate the data necessary to evaluate our auction designs and judge whether ‘licenses [have been] issued for bids that fall short of the true market value of the license,’”³¹ not to facilitate public scrutiny of private transactions. Indeed, the Commission specifically contemplated that applicants could request confidential treatment of sensitive information,³² and the Wireless Telecommunications Bureau has previously determined that the purposes of Section 1.2111(a) can be served without public disclosure of such information.³³

9. Section 0.457 of the Commission’s Rules specifically describes materials that the Commission does not routinely make available for public inspection,³⁴ including “trade secrets and commercial or financial information.”³⁵ For materials not specifically listed in Section 0.457, Section 0.459 provides a mechanism by which any party submitting information to the Commission may request that the information be kept confidential.³⁶ A party seeking confidential treatment under this rule is required to submit a statement of the reasons for withholding the materials from inspection and of the facts upon which those reasons are based.³⁷ The justification ACL and NUSCO give for requesting confidentiality is that the information is “commercial in nature and subject to non-disclosure agreement between Parties” and “also involves trade secrets and constitutes a proprietary work product.”³⁸ They also state that the purchase agreement involves “other economic terms and conditions the public disclosure of which may cause damages to a Party or Parties.”³⁹ PSI speculates that “the redacted information involves PSI and its existing site-specific licenses in parts of the partitioned area that is the subject of the Agreement. It further appears that payments to Consortium may be conditioned upon certain occurrences with respect to PSI’s existing licenses and/or pending proceedings before the FCC.”⁴⁰ Accordingly, it believes that those provisions of the purchase agreement are unique and, therefore, that their public disclosure would not impact future deals.⁴¹ However, we agree with ACL and NUSCO that the redacted information could be of interest and benefit to their competitors to the detriment of ACL and NUSCO.⁴² Therefore, we grant the request for protection of the information redacted from the copy of the purchase agreement filed on August 3, 2005.⁴³

10. *Waiver Request.* Under the current rules, AMTS stations may provide either commercial service or private correspondence service to maritime units, but may provide only commercial service to

³¹ *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2385 ¶ 214 (quoting H.R. Rep. No. 111, 103d Cong., 1st Sess. 257 (1993)), *quoted in TeleCorp PCS, Inc., Memorandum Opinion and Order*, 16 FCC Rcd 3716, 3738 ¶ 52 (WTB 2000) (*TeleCorp*).

³² *See Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2386 ¶ 215.

³³ *See TeleCorp*, 16 FCC Rcd at 3738 ¶ 53.

³⁴ 47 C.F.R. § 0.457.

³⁵ 47 C.F.R. § 0.457(d).

³⁶ 47 C.F.R. § 0.459.

³⁷ 47 C.F.R. § 0.459(b).

³⁸ *See Protection Request* at 3.

³⁹ *Id.*

⁴⁰ *Opposition to Modified Protection Request* at 3.

⁴¹ *Id.*

⁴² *See, e.g., Freedom of Information Act Request for Satellite Construction Contract Filed by Pegasus Development Corporation, Order*, DA 05-2450, ¶ 7 (IB rel. Sept. 13, 2005).

⁴³ For the same reasons, we deny PSI’s alternate request that the unredacted agreement be provided to it pursuant to an appropriate protective order. *See id.* at 3-4.

units on land.⁴⁴ NUSCO requests a waiver of various rules in order to permit it to use AMTS spectrum for PLMR operations.⁴⁵ As NUSCO notes, the Commission has proposed to amend the Part 80 rules to permit PLMR use of AMTS spectrum.⁴⁶ In this case, we find that permitting the use of the subject frequencies for PLMR operations will promote the efficient use of AMTS spectrum and serve the public interest by supporting critical power utility operations. Moreover, grant of NUSCO's waiver request is consistent with a prior waiver grant to allow PLMR use of maritime spectrum by an electric utility.⁴⁷ Therefore, we grant NUSCO's waiver request, conditioned on the outcome of the pending rulemaking proceeding.⁴⁸

ORDERING CLAUSES

11. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i) and 309(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309(d), and Section 1.41 of the Commission's Rules, 47 C.F.R. § 1.41, the petition filed by Paging Systems, Inc. on May 25, 2005 to deny application FCC File No. 0002147762 IS DENIED.

12. IT IS FURTHER ORDERED that the request filed on July 13, 2005 by AMTS Consortium, LLC and Northeast Utilities Service Company, and modified on August 3, 2005, for confidential treatment of certain materials IS GRANTED TO THE EXTENT INDICATED HEREIN.

13. IT IS FURTHER ORDERED that the waiver request filed on May 4, 2005 by Northeast Utilities Service Company in association with application FCC File No. 0002147762 IS GRANTED, CONDITIONED on compliance with any rules adopted as a result of the pending Notice of Proposed Rule Making in WT Docket No. 04-257.

14.

15. IT IS FURTHER ORDERED that application FCC File No. 0002147762 SHALL BE PROCESSED consistent with this *Order* and the Commission's Rules. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Michael J. Wilhelm

⁴⁴ Maritel, Inc. and Mobex Network Services, Inc., *Notice of Proposed Rule Making*, WT Docket No. 04-257, 19 FCC Rcd 15225, 15227-28 ¶ 6 (2004) (*Maritel/Mobex NPRM*).

⁴⁵ See FCC File No. 0002147762 at Waiver Request.

⁴⁶ See *Maritel/Mobex NPRM*, 19 FCC Rcd at 15228-29 ¶¶ 7-8.

⁴⁷ See Wireless Telecommunications Bureau Assignment of Authorization and Transfer of Control Applications Action, *Public Notice*, Report No. 1816 (WTB rel. Apr. 28, 2004) (FCC File Nos. 0001554439, 0001554477) (assignment from Warren C. Havens to Pacificorp); see also, e.g., County of Placer, *Order*, 20 FCC Rcd 3657 (WTB PSCID 2005) (granting similar waiver to permit public safety use of maritime spectrum); Commonwealth of Virginia, *Order*, 19 FCC Rcd 15454 (WTB PSCID 2004) (same).

⁴⁸ We do not believe that it is necessary, as requested by PSI, to require additional technical information. See Petition at 4. As noted previously, the AMTS rules mandate co-channel interference protection for PSI's incumbent site-based stations. NUSCO must adhere to those requirements, and we have no reason to expect that it will not. In the event PSI experiences actual interference from NUSCO's operations, it may bring the situation to the Commission's attention for appropriate action.

Chief, Public Safety and Critical Infrastructure Division
Wireless Telecommunications Bureau